

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALEX TEMIRBEKOV,

Case No. 2:22-cv-11086

Plaintiff,

HON.

vs.

LILIYA NIKOLAYEVNA
BABARYKINA and PNB
TRUCKING, LLC,

Defendants.

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NOTICE OF REMOVAL

Defendants, LILIYA NIKOLAYEVNA BABARYKINA and PNB TRUCKING, LLC, (“Defendants”), by and through their counsel, KEVIN J. PLAGENS and KOPKA PINKUS DOLIN PC, remove this action from the Wayne County Circuit Court to the United States District Court for the Eastern District of

Michigan, Southern Division. In support of this Notice of Removal, Defendant states as follows:

PROCEDURAL BACKGROUND AND GROUNDS FOR REMOVAL

1. On or about February 28, 2022, Plaintiff ALEX TEMIRBEKOV (“Plaintiff”) commenced this action by filing a Complaint in the Wayne County Circuit Court and causing a Summons to be issued. *See Ex. A*, Summons and Complaint.

2. On April 24, 2022, Plaintiff’s Complaint was served upon Defendant BABARYKINA via personal service. *See Ex. B*, Return of Service.

3. On May 13, 2022, Defense counsel advised Plaintiff’s counsel that he would accept service of the summons and complaint on behalf of Defendant PNB Trucking, LLC.

4. On May 13, 2022, counsel herein filed its Answer to Plaintiff’s Complaint, Affirmative Defenses and Reliance on Jury Demand on behalf of the Defendants. *See Ex. C*, Answer to Complaint, Affirmative Defenses and Jury Demand.

5. No other pleadings, orders, or documents were filed in this case.

6. Pursuant to **28 U.S.C. § 1446(b)(3)**, this Notice of Removal is filed within thirty (30) days of receipt of Plaintiff’s counsel’s acknowledgement that Plaintiff seeks damages in excess of \$75,000.00 which first allowed Defendant to

ascertain that the case is one which is removable. This information was provided by Plaintiff's counsel via email on May 13, 2022. *See Ex. D*, Email. Therefore, this Notice is timely filed pursuant to **28 U.S.C. § 1446(b)**.

7. This Court is in the district and division “embracing the place where [the State Court] action is pending.” **28 U.S.C. § 1441(a)**. The Wayne County Circuit Court is located in the Eastern District of Michigan.

DIVERSITY JURISDICTION

8. This case is a civil action of which this Court has original diversity jurisdiction pursuant to **28 U.S.C. §1332(a)** because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs, and attorneys' fees, and this action is between citizens of different states, as demonstrated more fully below:

a. **Plaintiff Is A Citizen of the State of Florida:** A person is a citizen of the state in which he or she is domiciled. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). “[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). Defendant is informed and that Plaintiff is domiciled in, and citizen of, the State of Florida. In his Complaint, Plaintiff alleges that he is a resident of the City of Sunny Isles

Beach, County of Miami-Dade, State of Florida. Ex. A. Plaintiff has not alleged an intent to move or leave this domicile. Ex. A. Therefore, for diversity purposes, Plaintiff is domiciled in and citizen of the State of Florida.

b. **Defendant PNB Trucking LLC is Incorporated in the State of Washington:** Defendant PNB is a corporation incorporated under the laws of the State of Washington and has its headquarters and principal place of business located at 1911 SW Campus Dr. Federal Way Tacoma, WA 98023. “For purposes of determining diversity jurisdiction, a corporation can be a citizen of two states: (1) its state of incorporation; and (2) the state of its principal place of business.” *Freeman v. Unisys Corp.*, 870 F. Supp. 169, 172 (E.D. Mich. 1994) (citing **28 U.S.C. § 1332(c)**). Accordingly, Defendant PNB Trucking LLC is a citizen of the State of Washington and is not now and never has been a citizen of the State of Florida within the meaning of **28 U.S.C. § 1332(c)**.

c. **Defendant Liliya Nikolayevna Babarykina Is A Citizen of Washington:** A person is a citizen of the state in which he or she is domiciled. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). “[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain

there.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). Defendant Liliya Nikolayevna Babarykina is domiciled in, and a citizen of, the State of Washington. Therefore, for diversity purposes, Defendant is domiciled in and citizen of the State of Washington.

9. Therefore, complete diversity exists because Plaintiff is a citizen of Florida and Defendant PNB Trucking LLC is incorporated in the State of Washington a citizen of the State of Washington, and Defendant Liliya Nikolayevna Babarykina is a citizen of Washington.

10. Pursuant to **L.R. 81.1(a)** and **(b)** and **28 U.S.C. § 1332(a)**, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs, and attorney fees. Plaintiff’s counsel has explicitly stated that Plaintiff is seeking damages that exceed \$75,000.00 due to his alleged injuries. Ex. E. Although Defendant denies the allegations in Plaintiff’s Complaint and denies any liability to Plaintiff whatsoever, if those allegations are proven to be true, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs and attorney’s fees.

11. A Notice of Filing Notice of Removal and a copy of this Notice of Removal to Federal Court will be filed with the Wayne County Circuit Court as required by **28 U.S.C. § 1446(d)** and copies of the same will be served upon Plaintiff.

12. Based upon the foregoing, Defendants are entitled to remove this action to this Court under **28 U.S.C. § 1331**, et. seq.

13. In filing this Notice of Removal, Defendants do not waive any defenses that may be available to it, including but not limited to, those under **Fed. R. Civ. P 12(b)**.

14. This Notice of Removal is filed in compliance with **Fed. R. Civ. P. 11** and Local Rules of the United States District Court for the Eastern District of Michigan.

WHEREFORE, Defendants respectfully request that this Court take jurisdiction over this matter and grant such other relief as the Court deems proper.

Respectfully Submitted,

KOPKA PINKUS DOLIN PC

/s/ Kevin J. Plagens

By: _____
KEVIN J. PLAGENS (P55992)
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Dated: May 19, 2022

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I, Kimberly Ramsay, am an employee of KOPKA PINKUS DOLIN PC, and I certify that I e-filed the foregoing document on May 19, 2022, using the ***ECF e-filing system*** which will send a copy of this document together with notification to all counsel of record; and that I mailed and emailed a copy of this document to any non-e-filing participants.

/s/ Kimberly Ramsay

Kimberly Ramsay